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DIVISION OF ECONOMIC JUSTICE  
ANTITRUST BUREAU

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May 13, 2011

**BY FAX**

The Honorable Gabriel W. Gorenstein  
United States Magistrate Judge  
Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

SIGNED AND FILED: Gabriel W. Gorenstein DATE: 5/16/2011  
GABRIEL W. CORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

**Re: In Re Municipal Derivatives Antitrust Litigation, MDL No. 1950,  
Master Docket No. 08-cv-2516 (VM) (GWG) (SDNY)**

Dear Magistrate Judge Gorenstein:

The States write with regard to Your Honor's order, dated May 13, 2011, Master Docket No. 1333 (the "Order"). We thank the Court for considering our comments on this issue, and respectfully ask the Court to clarify the Order in two respects. First, while Your Honor indicated at the May 11 hearing that the Court would issue an order which would limit Class Counsel's use of the "class list," *see* Tr. at 9:14-17,<sup>1</sup> the Order Your Honor issued is silent in this respect. The States request that the Order confirm that any use of the "class list" submitted to Interim Co-Lead Class Counsel and the Oakland Plaintiffs ("Class Counsel") will be used solely for the purpose of commenting on the language of the proposed State Agreement notice, and that the list will not be used by Class Counsel to communicate with putative class members regarding the acceptability of the settlement and its terms.

<sup>1</sup> Your Honor stated with respect to limited use issue: "I could limit through an order saying they can only be used for purposes of making a proposal as to the content of the class notice, be limited to those two." Mr. Hausfeld agreed to this condition. *See* Tr. at 9:18-19. A copy of the relevant passages from the transcript from the May 11 hearing is attached to this letter.

Second, the Order's language suggests that the States will be providing the class list to Class Counsel. As the Court acknowledged, the States' position is that they are not subject to discovery.<sup>2</sup> In addition, the States continue their objection to the relevance of the list with respect to Class Counsel's ability to comply with the Court's March 1 Order. Nevertheless, the States will work with BAC to finalize the list.

Respectfully submitted,



Elinor R. Hoffmann

Encl.

cc: (all counsel via e-mail)

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<sup>2</sup> See Tr. at 24:13-15 ("Let's talk about what the form of that discovery is. I'm not asking you to agree to anything or to admit that you're subject to the Court's jurisdiction.").